

HON. EDWARD F. SHEA

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EDWARD COLLINS, an individual) No: CV-10-324-EFS
vs.)
Plaintiff,) PLAINTIFF'S REQUEST FOR
vs.) CONTINUANCE OF MOTION FOR
BISHOP, WHITE & MARSHALL,) SUMMARY JUDGMENT WITH
P.S., a Washington corporation) ATTACHED DECLARATION OF
Defendant.) DEAN R. FLOERCHINGER
)
)

I. RELIEF SOUGHT

The Plaintiff, Edward Collins (hereinafter “Plaintiff”) requests this Court for a continuance of Defendant’s Motion for Summary Judgment from the current date of March 25, 2011 up to a later date, which accords parties sufficient time to conduct meaningful discovery.

II. GROUNDS FOR RELIEF

1. This request is made pursuant to Rule 56(d) of the Federal Rules of Civil Procedure on the grounds that further discovery is vital to the Plaintiff's ability to make a meaningful response to the motion for summary judgment filed by Bishop, White & Marshall (hereinafter "Defendant").

2. Plaintiff proposed to make discovery as to the following issues:

- a. The actual numbers of times when Defendant has failed to follow proper collections procedures in the past.
- b. Previous instances in which the Defendant has filed summons and complaints against the wrong person.
- c. What actions were taken by Defendant's employee who signed (the attorney assigned to collect the debt) and caused to be served the summons and complaint against Plaintiff.
- d. Bank of America documents that support the debt.
- e. FIA Card Services, National Association documents that support the debt and allege the right to collect the debt.
- f. Communications between Defendant and Edward Collins, including but not limited to demand letters and phone calls.
- g. The procedures in place to prevent error.
- h. General responses to Plaintiff's Interrogatories.

1 3. Plaintiff proposes to explore the issues identified by taking the following
 2 steps:

3 a. Service of a brief set of interrogatories concerning Defendant's bona fide
 4 error defense, including but not limited to the explicit procedures used by
 5 Defendant to prevent persons from being wrongfully sued, and past
 6 instances in which Defendant has served the wrong party with a
 7 summons and complaint.

8 b. The depositions of Carolyn Waniczek, Laurie K. Friedl, and Krista L.
 9 White.

10 c. A request for production of documents concerning Defendant's bona fide
 11 error defense, including but not limited to past law suits against
 12 Defendant where they have raised the bona fide error defense, as
 13 indicated by Defense counsel's use of boilerplate language in their
 14 summary judgment motion which indicates use of the bona fide error
 15 defense in previous similar FDCPA actions against Defendant.

16 4. Given the early juncture in the case, *both* Defendant and Plaintiff have not
 17 completed discovery in time for the Court to make a reasonable ruling as to
 18 Defendant's motion for summary judgment on its currently scheduled date.
 19 Moreover, Plaintiff has yet to serve interrogatories, requests for production of
 20 documents, or request for admissions on the Defendant. In addition, Plaintiff is

still in the process of attempting to respond to Defendant's interrogatories and requests for production of documents.

5. This request for continuance was made as soon after the papers on the motion for summary judgment were served. The only delay resulted from attempts to secure a stipulated continuance, given the preliminary state of litigation, so as to avoid the need for this formal, written motion.

6. Given the preliminary state of the litigation, the requested continuance will not prejudice any party to this action.

7. In addition, Defendant's motion for summary judgment identifies "Miller" as the Plaintiff. Defendant's motion alleges a bona fide error in "commencing an action in the wrong county," which is in no way factually relevant to Plaintiff's complaint. Finally and more importantly, Plaintiff needs time to conduct discovery.

8. By presenting this motion, Plaintiff certifies that this motion is presented in good faith that further discovery on these issues is likely to establish controverting evidence as to material facts contained in the motion for summary judgment, and that the request for a continuance is not made for purposes of delay.

III. RECORD ON MOTION

This request is based on this motion, the attached memorandum, the Supporting Declaration of Dean R. Floerchinger, all pleadings and papers on file in

1 this action, and on whatever other evidence and argument may be presented at any
2 hearing on this Motion.

3 Respectfully submitted,

4 UNIVERSITY LEGAL ASSISTANCE
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6 s/ Alan L. McNeil
7 ALAN L. McNEIL, WSBA #7930
Attorney for Plaintiff

8 s/ Dean R. Floerchinger
9 DEAN R. FLOERCHINGER, WSBA #9119088
Washington Rule 9 Legal Intern for Plaintiff
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DECLARATION OF SERVICE

I, Tricia Leahy-Charles, hereby certify that on the date provided below, I electronically filed the foregoing request for continuance of motion for summary judgment with attached declaration of Dean R. Floerchinger with the Clerk of Court using CM/ECF system, which will send notification of such filing to the following individual:

Marc Rosenberg
Lee Smart, P.S., Inc.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
mr@leesmart.com

I declare under penalty of perjury under the laws of the State of Washington
that the foregoing is true and correct.

DATED February 3, 2011, at Spokane, Washington.

s/ Tricia Leahy-Charles
Tricia Leahy-Charles